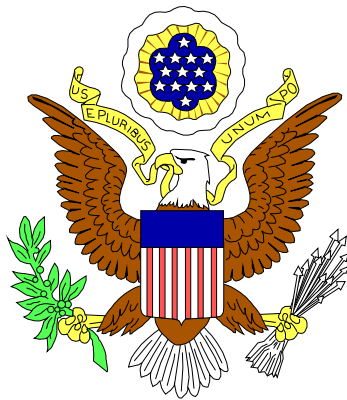


# UNITED STATES DISTRICT COURT FOR THE DISTRICT OF PUERTO RICO



**Release and Detention Pending Judicial Proceedings:**  
**Bail Bond Orientation Handbook for Criminal Defendants and their Sureties**

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## **PREFACE**

This text is not intended to confer or create any rights, privileges or benefits to prospective or actual parties. It is also not intended to have the force of law. Its sole intention is to provide a general orientation concerning bail bond proceedings at the U.S. District Court for the District of Puerto Rico.

The Clerk's Office is not allowed to give you legal advice, but will try to answer any questions about procedure or rules of the Court.

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## **THE BAIL REFORM ACT OF 1984**

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The Bail Reform Act of 1984, as amended (“the Act”), Title 18, United States Code, Sections 3141 *et seq.*, governs the release and detention of federal criminal defendants before trial. The Act “establishes standards and procedures governing both the pretrial phase of a case, the period between conviction and sentencing, and the period during the pendency of an appeal by either side. It prescribes consecutive penalties for failure to appear and for committing offenses while on release. It also establishes standards and procedures governing material witnesses.” Weinberg, Federal Bail and Detention Handbook, § 2.03.

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## **RELEASE AND DETENTION PROCEEDINGS**

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The Initial Appearance or Initial Hearing is the first court appearance where a federal criminal defendant’s release or detention pending trial is determined by a judicial officer. 18

U.S.C. § 3141. At the Initial Hearing, the judicial officer may impose a condition or combination of conditions that should reasonably assure the appearance of the defendant “unless the judicial officer determines that such release will not reasonably assure the appearance of the person as required or will endanger the safety of any other person, or the community.” 18 U.S.C. § 3142(b).

The presiding judicial officer may also conduct a Detention Hearing to determine whether any condition or combination of conditions of release will apply. 18 U.S.C. § 3142 (c) and (f). These conditions may include a combination of any of the following: third party custodian; employment requirements; educational requirements; restrictions on personal associations or travel; compliance with a curfew; refraining from the excessive use of alcohol; refraining from the unauthorized use of narcotic drugs or controlled substances; undergoing medical, psychological or psychiatric treatment; execution of an agreement to forfeit property upon failure to appear; execution of a bail bond with solvent sureties; electronic monitoring; and, any other reasonable condition.

United States magistrate judges are the front-line judicial officers who conduct the majority of initial appearance and detention hearings. There are 4 United States magistrate judges in the District of Puerto Rico.

A judicial officer may also order a defendant to be temporarily detained to permit revocation of conditional release, deportation or exclusion. 18 U.S.C. § 3142(d).

With few exceptions, once a person has been found guilty of an offense, the judicial officer shall order his or her detention pending imposition of sentence. 18 U.S.C. § 3143.

Likewise, a person who has been found guilty of an offense and sentenced will generally be ordered detained pending appeal. 18 U.S.C. § 3144.

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## **RELEASE AND DETENTION FACTORS**

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The Act contains 13 specific conditions of release which the Court may impose separately or in combination if it finds that a criminal defendant's personal recognizance or unsecured appearance is inadequate. Some of the factors considered by the Court in detention and release proceedings include: the nature of the offense charged, such as whether the charged offense is a crime of violence or involves narcotics; the weight of the evidence; the personal history and characteristics of the person, such as character, family ties, employment, criminal history; and, dangerousness, including whether the person poses a threat to others or the community. 18 U.S.C. § 3142(g)(1)-(3). The Court may also consider other factors, such as the source of any property offered as collateral to secure a bond. 18 U.S.C. § 3142(g)(4).

The U.S. Probation Office for the District of Puerto Rico assists the Court by conducting bail and presentence investigations, and supervising persons for whom conditional pretrial release has been authorized as well as parolees and probationers. The U.S. Probation Office is located at: Room 400 Federico Degetau Federal Building, 150 Carlos Chardón Street, San Juan, Puerto Rico 00918-1741.

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## REVIEW AND APPEAL OF RELEASE OR DETENTION ORDERS

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If a person is released by order of a magistrate judge, the attorney for the Government may file a motion for revocation of the order or amendment of the conditions of release. The person may also file a motion for amendment of the conditions of release. Any such motion must be filed with the court with original jurisdiction over the offense. 18 U.S.C. § 3145(a).

If a person is ordered detained by a magistrate judge, the person may file a motion for revocation or amendment of the detention order, with the court having original jurisdiction over the offense. 18 U.S.C. § 3145(b).

Release or detention orders entered by district judges may be appealed before the U.S. Court of Appeals for the First Circuit. 18 U.S.C. §§ 3145(c), and 3731; 28 U.S.C. § 1291; Fed. R. App. P. 9.

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## SECURING BAIL

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In ordering the release of a criminal defendant, the Court may impose financial conditions. It may authorize an unsecured personal bond whereby the person promises to pay the Court a specified sum of money if he or she fails to appear as required. If an unsecured personal bond is authorized the person is released without deposit of cash bail or collateral and promises to pay a sum of money if he or she fails to appear as required.

The Court may require that a solvent co-signer, usually a family member or friend, appear where an unsecured personal bond has been authorized.

In cases where release is conditioned upon security, the person may secure a commercial bail bond or may deposit at the Clerk's Office, subject to forfeiture for breach of a condition of release, cash or collateral. A person's relatives or close friends sometimes post their property or act as his or her sureties.

Fed. R. Crim. P. 46(f) sets out the procedure to declare a bail forfeited if a condition of the bond is breached. Any property designated as bond security or collateral may also be forfeited to the United States if the person fails to appear. 18 U.S.C. § 3146(d); Fed. R. Crim. P. 46(i).

The general guidelines for criminal bond security are set forth in Loc. Cr. R. 146. Once approved by order of the Court, criminal bonds may be secured as follows:

- Cash payment by certified check or money order issued within the last 5 days payable to "Clerk, U.S. District Court."
- By a corporation authorized to act as surety by the Commonwealth of Puerto Rico, or by the Secretary of the U.S. Treasury Department pursuant to 6 U.S.C. § 113.
- By an individual person bearing a current identification with photograph.
- Secured by real estate subject to submission of all the following documents:
  1. Certified copy of the Deed of Sale.
  2. Certified mortgage balance, if applicable, issued by lender.
  3. Certificate of property taxes from the appropriate agency, that is, the P.R. Treasury Department and/or the "Centro de Recaudación de Impuestos Municipales (CRIM)," issued no more than 15 days prior to submission as surety.

4. Recent Property Registry certificate, issued by an authorized municipal officer and/or the Puerto Rico Property Registry. The Clerk's Office will provide the surety or owner of said property a letter to the Property Registrar explaining the information that is required.
5. An Appraisal Report, prepared and certified by a licensed appraiser, bearing his or her original seal and signature, issued no more than 3 months prior to the date of submission.
6. If applicable, a certified copy of the Declaration of Heirs.
7. The original of any bearer note encumbering a property.

Acceptance of real estate security always remains at the discretion of the Court. The Clerk of Court is not bound to accept properties encumbered by 2 or more mortgages as surety. It is the policy of the Clerk's Office that, except in cases of corporate surety, bail shall not be taken by a person acting under power of attorney or other written instrument.

In cases where an estate is the owner of the real estate property to be posted, all heirs must appear and sign the necessary court forms and other documents, as required.

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### **REQUESTING THE RETURN OF BOND DOCUMENTS**

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At the conclusion of a case, upon the defendant's remand to begin serving any sentence imposed, a surety may request the return of any bond-related documents deposited at the Clerk's Office by prior appointment by calling the Intake Section at (787)772-3032 or (787)772-3033.

Return of cash deposited as collateral must be requested at the conclusion of a case, by written motion to the Court. Said cash will be returned only upon Court order.

The following information is necessary to schedule an appointment: the complete name of the surety; the criminal case number; and, the Clerk's Office receipt number.

Documents will be returned to the person whose name appears in the receipt. An authorized representative must be designated in writing, under signature of the surety named in the receipt. The original letter of authorization and original Clerk's Office receipt will be kept by the Clerk's Office for the record. Sureties or authorized representatives must present a valid photo identification in order to receive bond-related documents.

Documents may only be returned by mail if a surety resides outside the District of Puerto Rico.